

## 48A C.J.S. Judges § 230

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### A. In General

§ 230. Constitutional and statutory provisions—Validity  
of constitutional and statutory provisions and court rules

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  40

**Various statutory provisions and court rules for disqualification have been upheld as valid.**

Various statutory provisions for disqualification<sup>1</sup> and court rules for disqualification<sup>2</sup> have been upheld as valid and constitutional. However, where a constitutional provision defines the standards for incompetency of judges and confers on the legislature certain powers with respect to such incompetency, the legislature may provide for disqualification only in conformity with the power conferred by such provision duly construed.<sup>3</sup> Further, where a judge, special or regular, has taken jurisdiction of a case, the legislature has no power to enact a statute granting to either party a change of judge.<sup>4</sup>

*Separation of powers doctrine.*

Some statutory disqualification provisions are not unconstitutional as a violation of the separation of powers doctrine.<sup>5</sup> However, other such provisions entitling a litigant to a peremptory challenge against a judge without any affidavit of bias or prejudice,<sup>6</sup> or permitting disqualification on application for no cause at all,<sup>7</sup> or requiring recusal even when to do so deprives a party of access to the court because no judge can hear the case,<sup>8</sup> or encroaching upon the area of court administration<sup>9</sup> may be unconstitutional as a violation of that doctrine.

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## Footnotes

- 1  
Ill.—*People v. Williams*, 124 Ill. 2d 300, 124 Ill. Dec. 577, 529 N.E.2d 558 (1988).  
  
Or.—*State ex rel. Kafoury v. Jones*, 315 Or. 201, 843 P.2d 932 (1992).  
  
As to particular grounds for disqualification, see §§ 245 to 297.
- 2  
N.H.—*Douglas v. Douglas*, 143 N.H. 419, 728 A.2d 215 (1999).  
  
Or.—*In re Conduct of Schenck*, 318 Or. 402, 870 P.2d 185 (1994).
- 3  
Tenn.—*Moore v. Love*, 171 Tenn. 682, 107 S.W.2d 982 (1937).  
  
**A.L.R. Library**  
Laws Governing Judicial Recusal or Disqualification in State Proceeding as Violating Federal or State Constitution, 91 A.L.R.5th 437.
- 4  
Ind.—*State ex rel. Youngblood v. Warrick Circuit Court of Warrick County*, 208 Ind. 594, 196 N.E. 254 (1935).  
  
As to encroachment of legislature on judiciary, generally, see C.J.S., Constitutional Law §§ 220 to 249.
- 5  
Ill.—*People ex rel. Baricevic v. Wharton*, 136 Ill. 2d 423, 144 Ill. Dec. 786, 556 N.E.2d 253 (1990).  
  
N.D.—*Traynor v. Leclerc*, 1997 ND 47, 561 N.W.2d 644 (N.D. 1997).
- 6  
Nev.—*Johnson v. Goldman*, 94 Nev. 6, 575 P.2d 929 (1978).
- 7  
Or.—*State ex rel. Bushman v. Vandenberg*, 203 Or. 326, 280 P.2d 344 (1955).
- 8  
Mo.—*Weinstock v. Holden*, 995 S.W.2d 408, 91 A.L.R.5th 715 (Mo. 1999).  
  
As to rule of necessity, see § 235.  
  
As to disqualification on judge's own motion, see § 299.
- 9  
Ill.—*People v. Joseph*, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).